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Plaintiffs Samsung Electronics Co., Ltd. and
Samsung Electronics America, Inc.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

LARGAN PRECISION CO., LTD.,

Plaintiff and Counterclaim Defendant,

v.

SAMSUNG ELECTRONICS CO., LTD.,
ET AL.,

Defendants and Counterclaim Plaintiffs.

CASE NO. 13-CV-2740-DMS-NLS

**EX PARTE MOTION FOR LEAVE TO
FILE MOTIONS IN EXCESS OF
PAGE LIMITS**

DEMAND FOR JURY TRIAL

Defendants and Counterclaim Plaintiffs Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. (“Samsung”¹) respectfully move the Court to allow the parties to file briefs in excess of 25 pages in support of the parties’ summary judgment and *Daubert* motions due by September 3, 2015. (Dkt. No. 145 (setting deadline for filing all motions other than motions *in limine*).) Samsung understands Local Civil Rule 7.1(h) to limit the parties to one 25-page brief absent prior leave of the Court.

Pursuant to the Court’s Scheduling Order, on September 3rd, Samsung intends to file two motions, one seeking summary judgment on certain liability (non-infringement and invalidity) and damages issues related to the six different patents-in-suit, and a second *Daubert* motion challenging Largan’s expert witness qualifications and/or opinions. These motions are intended to narrow the scope of this case where Largan asserts 20 different claims against many lens assemblies used by Samsung and seeks related remedies for each. In order to fully address these issues, Samsung requests that the Court permit it (and Largan if it chooses to file any motions) to file two separate motions on September 3rd subject to the following page limits:

Summary Judgment:

- Opening & Opposition: 40 pages
- Reply: 15 pages

***Daubert*:**

- Opening & Opposition: 30 pages
- Reply: 12 pages

Local Civil Rule 7.1(h). Local Civil Rule 7.1(h) states that briefs in support of or in opposition to all motions noticed for the same motion day may not exceed 25 pages, while reply briefs are limited to 10 pages. Samsung understands this rule to limit

¹ Effective January 1, 2015, Samsung Telecommunications America, LLC (“STA”) merged into Samsung Electronics America, Inc., and STA ceased to exist as a separate corporate entity.

1 Samsung and Largan to filing a single 25 page motion addressing all issues on September
 2 3rd.² The Court has the authority to grant a party leave to file additional briefs and to
 3 exceed the page limits. Local Civil Rule 7.1(h). Whether to grant leave is at the
 4 discretion of the Court. Pursuant to S.D. Civ. L.R. 83.3(g)(2), Samsung's counsel has
 5 also informed Largan's counsel when and where this application motion would be made.

6 **Notice of Samsung's Ex Parte Application.** On August 12th, during a meet and
 7 confer, Samsung told Largan that Samsung intended to seek an extension of the page
 8 limits and proposed filing a joint request. On August 19th, having not received a
 9 response, Samsung sent an email to Largan again proposing a joint motion and stating
 10 Samsung's intent to raise this issue with the Court. On August 20th, Largan declined to
 11 join Samsung's request, taking the position that 25 pages as provided-for in the local
 12 rules is sufficient.

13 **Good Cause to Allow Two Briefs.** There is good cause to permit Samsung to file
 14 two separate motions. First, the legal standards for summary judgment are different from
 15 those used in *Daubert* challenges. Second, the issues in the motions are different, with
 16 the summary judgment motion addressing issues in the case which may (or may not)
 17 implicate expert reports and the *Daubert* motion raising direct challenges to Largan's
 18 experts and opinions. Allowing the two motions to be filed separately will improve the
 19 clarity of these issues for the Court. Moreover, Samsung's motions, if granted, would
 20 allow the Court to narrow the issues to be decided at trial in this complex patent case.

21 **Good Cause Regarding Summary Judgment.** There is good cause to allow 15
 22 extra pages for opening and opposition briefs and 5 extra pages for reply briefs. Largan
 23 is currently asserting *twenty claims* (many depending on multiple additional claims)
 24 across *six patents*—five of which are unrelated to each other—against *eight* lens modules
 25 contained within almost *40* camera modules contained within *19* Samsung smartphone,
 26 tablet, and smartwatch products. Although expert discovery is still pending, the record

27 ² Relatedly, Samsung understands that it would be improper to attempt to avoid this limit
 28 by serially filing motions on separate days between now and September 3rd.

1 shows there are numerous issues ripe for summary judgment for each patent. Resolution
2 of these issues on summary judgment could resolve or significantly narrow the issues in
3 the case.

4 Although no final decision has yet been reached on what issues to pursue given the
5 ongoing expert discovery, at this time, Samsung expects to move for summary judgment
6 of non-infringement and/or invalidity of the particular asserted patents. Given Largan's
7 twenty asserted claims and six asserted patents, briefing summary judgment issues will
8 be longer than the ordinary patent case. Likewise, Samsung may seek summary
9 judgment of invalidity on certain of the six patents-in-suit based on prior art and/or the
10 failure to provide support for the twenty asserted claims. Given the need to address
11 specific claim limitations on a patent-by-patent basis briefing will take more pages than
12 an ordinary patent case. Further, Samsung also anticipates seeking summary judgment
13 on certain discrete damages and remedy issues, including marking. These issues will
14 require sufficient space to frame them for the Court's consideration.

15 **Good Cause Regarding Daubert.** There is good cause to allow 5 extra pages for
16 opening and opposition briefs and 2 extra pages for reply briefs regarding the *Daubert*
17 motion. Largan has served five separate expert reports (including two responsive expert
18 reports not at issue in Samsung's currently-pending motion to strike) from four different
19 experts. Samsung expects to file *Daubert* motions against certain opinions of Largan's
20 expert witnesses where the expert lacks the relevant expertise, their theories lack support
21 in the field, or do not fit the facts. These issues include a deeply flawed survey on which
22 Largan relies for damages. Samsung's *Daubert* motion may also seek to preclude certain
23 opinions in Largan's responsive expert reports. The additional requested space will allow
24 Samsung to frame these issues more fully for the Court's consideration.

25 **The Timing of Samsung's Motions is Proper.** These issues could not have been
26 practicably raised earlier in this case. Expert discovery has not yet ended and the expert
27 reports framed the issues that may remain in the case for trial as long as they were
28 properly disclosed and supported.

1 For the reasons detailed herein, Samsung requests that the Court grant Samsung's
 2 motion to allow the parties to file a summary judgment motion pleading up to 40 pages,
 3 an opposition up to 40 pages, and replies up to 15 pages. Samsung also requests that the
 4 Court grant Samsung's motion to allow the parties to file a *Daubert* motion pleading up
 5 to 30 pages, an opposition up to 30 pages, and replies up to 12 pages.

6
 7 DATED: August 21, 2015

Respectfully submitted,

8 /s/ David W. Higer

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 17 Plaintiffs Samsung Electronics Co., Ltd.
 18 and Samsung Electronics America, Inc.
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on August 21, 2015 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system. Any other counsel of record will be served by electronic mail.

/s/ David W. Higer

David W. Higer